

HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NO. 2:15-cv-00369 RSM

JOINT STATUS REPORT AND ORDER  
REGARDING CASE SCHEDULE

MICROSOFT CORPORATION,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NO. 2:15-cv-00850 RSM

The above-captioned actions are for declaratory and injunctive relief under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. The parties jointly request that these actions remain open. The

1 parties agree to adopt the following procedures to resolve their outstanding disputes in these  
2 actions:

3 1. The parties agree that the Defendant shall complete a *Vaughn* index for all records  
4 that had been withheld in full based on the 5 U.S.C. § 552(b)(5) exemption. *See Vaughn v.*  
5 *Rosen*, 484 F.2d 820 (D.C. Cir. 1973). To the extent that the Defendant previously asserted an  
6 alternative basis (other than the 5 U.S.C. § 552(b)(5) exemption) for withholding the record in  
7 full, the Defendant need not include the record on the *Vaughn* index. To the extent that the  
8 Defendant takes the position that the record is exempt from disclosure based on an exemption  
9 (other than the 5 U.S.C. § 552(b)(5) exemption) that the Defendant did not previously assert, the  
10 Defendant will include an entry in the *Vaughn* index for such record.

11 2. The parties propose adoption of the following schedule for both FOIA cases:

SCHEDULE	
Event	Date
Defendant to provide declaration(s) concerning the adequacy of its search to the Plaintiff by:	August 31, 2020
Defendant to complete <i>Vaughn</i> index and provide to the Plaintiff by:	November 30, 2020
Plaintiff to complete list of challenges to Defendant's exemption claims on records withheld in part and provide to Defendant by:	November 30, 2020
Plaintiff to identify any remaining outstanding issues requiring briefing to Defendant by:	February 14, 2021
Defendant's motions for summary judgment (or stipulated dismissals) filed with the Court by:	March 31, 2021

23 3. Without prejudice to the Plaintiff's right to raise additional issues pursuant to the  
24 schedule set forth in paragraph 2, the parties presently anticipate that any dispute requiring  
25 briefing may be limited to the following issues:

a. Whether records created and/or assembled by the law firm Quinn Emanuel Urquhart & Sullivan, LLP, pursuant to its contract with the Defendant for the provision of services, constitute agency records under FOIA.

b. Whether the Defendant conducted an adequate search of the hard drive of Samuel Maruca, Defendant's former Director of Transfer Pricing Operations.

c. Whether the Defendant's handling of Mr. Maruca's hard drive rendered Defendant's search of that hard drive "unreasonable" as to Mr. Maruca's records.

d. Whether the Defendant properly withheld records (in whole or in part) based on a claim that such records were exempt from disclosure under 5 U.S.C. § 552(b)(5).

The parties jointly request that these actions remain open and that the Court enter an order adopting the case schedule proposed in paragraph 2.

Respectfully submitted this 17th day of March, 2020.

**BAKER & MCKENZIE LLP**

By: s/ Daniel A. Rosen  
Daniel A. Rosen, NYBA #2790442  
*Pro Hac Vice*  
452 Fifth Avenue  
New York, NY 10018  
Tel: (212) 626-4272  
Fax: (212) 310-1600  
Email: [daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

**CALFO EAKES & OSTROVSKY LLP**

By: s/ Patricia A. Eakes  
By: s/ Andrea D. Ostrovsky  
Patricia A. Eakes, WSBA #18888  
Andrea D. Ostrovsky, WSBA #37749  
1301 Second Avenue, Suite 2800  
Seattle, WA 98101  
Tel: (206) 407-2200  
Fax: (206) 407-2224  
Email: [patty@calfoeakes.com](mailto:patty@calfoeakes.com)  
[andrea@calfoeakes.com](mailto:andrea@calfoeakes.com)

***Attorneys for Plaintiff Microsoft Corporation***

1 **U.S. DEPARTMENT OF JUSTICE**

2 By: s/ Richard J. Hagerman

3 Richard J. Hagerman

4 Trial Attorney, Tax Division

5 U.S. Department of Justice

6 Post Office Box 227

7 Washington, DC 20044

8 Tel: (202) 616-9832

9 Fax: (202) 514-6866

10 Email: [richard.j.hagerman@usdoj.gov](mailto:richard.j.hagerman@usdoj.gov)

11 *Attorneys for Defendant Internal Revenue Service*

**ORDER**

It is SO ORDERED this 18 day of March, 2020.



**RICARDO S. MARTINEZ**  
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

**BAKER & MCKENZIE LLP**

**CALFO EAKES & OSTROVSKY LLP**

By: s/ Daniel A. Rosen  
Daniel A. Rosen, NYBA #2790442  
*Pro Hac Vice*  
452 Fifth Avenue  
New York, NY 10018  
Tel: (212) 626-4272  
Fax: (212) 310-1600  
Email: [daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

By: s/ Patricia A. Eakes  
By: s/ Andrea D. Ostrovsky  
Patricia A. Eakes, WSBA #18888  
Andrea D. Ostrovsky, WSBA #37749  
1301 Second Avenue, Suite 2800  
Seattle, WA 98101  
Tel: (206) 407-2200  
Fax: (206) 407-2224  
Email: [pattye@calfoeakes.com](mailto:pattye@calfoeakes.com)  
[andrea@calfoeakes.com](mailto:andrea@calfoeakes.com)

*Attorneys for Plaintiff Microsoft Corporation*

**U.S. DEPARTMENT OF JUSTICE**

By: s/ Richard J. Hagerman  
Richard J. Hagerman  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Tel: (202) 616-9832  
Fax: (202) 514-6866  
Email: [richard.j.hagerman@usdoj.gov](mailto:richard.j.hagerman@usdoj.gov)

*Attorneys for Defendant Internal Revenue Service*